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A New Way Needs a New Foundation

The Principle of Goodness, Law and Society

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Abstract: It is some two hundred years since the existing major political polarities first took shape: a curious "coincidence", as this is also the time since the last major revolution in foundational ethics, the overlapping introduction of Kant's principles and also of utilitarianism. Ethical ideas mould social and personal behaviour and expectations profoundly, yet frequently without recognition as cause or catalyst. At the recent UNESCO International Conference on Unity and Diversity in Religion and Culture, one of the authors introduced a new foundational ethical philosophy, the Principle of Goodness. This Principle expresses an ancient intuition about good and evil, which has found expression in the words and deeds of humanity's greatest souls - but always in examples, particulars, or implications, and not, it would seem, as an explicit statement of a grounding philosophical principle until now. As a result, many who respect and advocate what they intuitively see as basic standards of human decency and compassion often find themselves unable to argue successfully for their insights when faced with 'bottom line' or 'big picture' arguments, which use utilitarian or other outmoded theory to 'balance' competing interests - almost always to the disadvantage of the poor, the geographically distant, the numerically small, or the uneducated. By explicitly formulating the 'intuition of the soul', the Principle of Goodness provides a way to expose the intellectual and moral bankruptcy of policies, laws, and systems that ignore the wellbeing of anyone, whatever their situation. The Principle is so oddly familiar that it seems almost trivial (whether one thinks it right or wrong): Goodness is to try to benefit everyone; evil is to try to harm even a single innocent one. And yet, by presupposing this Principle (avoiding the evil and recommending the Good) as the constitutional principle, it is possible to develop non-trivial guidelines for personal, social, and political action and societal development. This is a realist theory of ethics, and its specific nature is discussed in another paper to appear shortly; the task of this paper is to examine the kinds of consequences for our laws and social systems, which would follow from re-examining their justification and structure in the light of the Principle. The sheer magnitude of this job necessarily means that the coverage is incomplete, even sketchy, and many connections will remain unexamined. Also, nothing will be said here about the implications for the individual in personal living, although they are also profound and of the utmost importance; that, too, will be addressed in another paper. As a realist theory (briefly, it asserts that Good and evil are realities in the sense that they are summaries of some properties of total Reality), it is essentially empirical rather than deductivist, developing rather than final. As such, our discussion will immediately draw in observable properties of reality and the human condition; these, combined with the Principle, recommend certain kinds of structures (but not just one possible or permissible structure!) as good bases for the development of human flourishing. The outcome of this reconstruction has certain features of social systems advocated by both the existing Right and Left but (inherent in the process of development from an independent foundational principle) it is not an amalgam of, or compromise between, these existing political viewpoints.

Keywords: Law, Social systems, Ethics, Principle of goodness, Organisation of society, Realism, Third Way

Introduction

THE PRINCIPLE OF Goodness is a theory about certain (moral) aspects of the nature of reality, namely that Good and evil are real and are described by these statements:

Goodness is to attempt to benefit everyone;
evil is to attempt to harm even a single innocent one.

Before commencing, it is important to clarify the assumptions here, and so we must investigate this a little further. These statements are in essence actions: "...to attempt to...". We are normally accustomed to reality being described in object form rather than act

form: "the tennis ball", "the proton", "the top quark", and so on. And yet process-understanding of reality also has a long history, perhaps going all the way back to Gautama Buddha ([Tucci *et al*]) or beyond. And certainly, classical and modern physics has reinforced its relevance and credibility. Many equations of physics are inherently descriptions of process, as they take the form of time-dependent descriptions of properties; and experiments on subatomic particles have revealed behaviour that baffles our common-sense idea of 'object', for example, the interference of a particle with itself, but which makes perfect sense understood as a process. ([Feynman *et al*] section 3-2). The purpose of this comment is to challenge the notion that only objects, existing ma-



terial things, the physical universe as revealed to the outward senses, deserve to be called real. This is more than just saying that some other things, not at first obviously made of matter, can be real or have a real effect. Such a position is adopted, for example, in the theory that consciousness is a property that arises from the incredibly complex combinations of material in our brains — together with their processes, to be sure, but essentially arising from properties of matter and energy. The view adopted here, by contrast, is that the Real we are concerned with is essentially process, and that objects — all objects — are patterns, or consistencies, in those processes. This is at heart a philosophical position in greater measure than it is a strictly scientific one; nevertheless, one may make a case that there are good reasons to accept it.

Coming to the point, then, the descriptions of Good and evil given above are asserted to be patterns in Reality that have been recognised many times before, even if not described in the general case in such words as those above. A more detailed discussion is given in [House 2]. Again, this kind of general framework of understanding reality is not new, but it is stated to clarify the assumptions of the philosophical theory. To restate this in prosaic terms, we may say that acts and intentions have effects, both on those acted upon and on the actors; that disparate acts can be harmonious or otherwise; that these harmonies or disharmonies themselves have further effects, influencing further acts by others, and so on, at each stage admitting of positive and negative feedback processes. Such a social web of interpersonal and associational relations might very well be (and almost certainly is) too complex to admit of the kind of analysis usually performed in the hard sciences, where, despite the complexity of reality, simplifying assumptions can usually be made, and then experiments abstracted from the full complexity of nature can be devised to test assumptions in isolation.

We might be unable to do similarly when dealing with ‘human’ processes, but it is clear that we can still ask what social patterns, what sort of human world, will result from implementing certain understandings of moral reality. We might or might not have a way to predict such patterns, such social realities, short of actually trying out various moral alternatives; but clearly connections exist, and if we once accept that these patterns of interrelationships and effects are themselves real, then much of the motivation for alternative readings of ethics as relativist, subjective, personal preferences disappears. The entire network of interactions is the ‘universe’ in which, it is here claimed, the above descriptions of Good and evil best describe the realities we seek to comprehend when we use these terms in the moral

sense (disregarding different usages such as good or bad fortune, etc.).

Due to the newness of this ethical theory, we shall now clarify just what the theory is claiming or recommending, and will clarify this by contrasting with utilitarianism and Kantian ethics. Then at last we can proceed to ask our main question as to what kind of society would develop with this ethic as its grounding rule. Alas, the sheer magnitude of that project will force us to restrict our attention to a few basic principles and likely consequences; a complete development is a hugely greater project than we can accomplish in this paper. Also, the discussion is intended only to show consequences of this ethical principle; there is no claim implied that other principles do not lead to similar recommendations in one or more cases.

Situating the Principle in the Ethical Landscape

The Principle of Goodness concerns the mind, willed intention put into action (or, when this is impossible, attempted to put into action). On the positive side, it recommends attempting to benefit everyone. Whilst benefit and harm most certainly are descriptions of effects, the principle concerns the mind only, what one attempts to do, not the effect resulting from the attempt. The effect only enters at the beginning, in the moral actor’s judgement of what constitutes benefit and harm, and what practical policies might achieve or avoid one or the other. This difference is subtle and must not be misunderstood; a short example should clarify this. A drug dealer, upon being asked to stop selling dangerous drugs, replies: “If I didn’t sell them, someone else would.” Let us assume that this is true. A utilitarian has no answer to this criminal, short of conjecturing various long-term harms such as the effect of a bad example or of disrespect for laws, etc. ([Finnis] explores this topic in depth, with an analysis with which we generally agree. We do not pursue this further, as our purpose here is to contrast, not to rebut utilitarianism.) The Principle of Goodness, however, has no such problem. To deliberately sell damaging goods, knowing that the buyer is compelled by an addiction to use them, is to intend to harm the buyer, and so must not be done. That the buyer will be harmed anyway is neither here nor there. In this respect the Principle resembles virtue ethics rather than any consequentialist ethic.

The Principle resembles, in fact, the unspoken principle at the basis of Socrates’ personal ethic whereby he refused to harm Leon of Salamis, knowing that others would be sent in his place to harm Leon anyway: “But when the oligarchy of the Thirty was in power, they sent for me and four others into the rotunda, and bade us bring Leon the

Salaminian from Salamis, as they wanted to execute him. This was a specimen of the sort of commands which they were always giving with the view of implicating as many as possible in their crimes; and then I showed, not in words only, but in deed, that, if I may be allowed to use such an expression, I cared not a straw for death, and that my only fear was the fear of doing an unrighteous or unholy thing. For the strong arm of that oppressive power did not frighten me into doing wrong; and when we came out of the rotunda the other four went to Salamis and fetched Leon, but I went quietly home. For which I might have lost my life, had not the power of the Thirty shortly afterwards come to an end. And to this many will witness.” (Plato: *Apology*) This is the kind of ethic underlying Kant’s maxim that one should always treat people as ends, and never as mere means. It is compatible with Kant’s alternative formulation, that one should act such that one’s acts are examples of universal rules, for the simple reason that the Principle *is* a universal rule; but further, it is a stronger rule than Kant’s, because the Principle is a particular universal rule, rather than a recommendation to freely choose one such rule from the infinite set of possible rules. It is also akin, in its focus on intention rather than effect, to the ethic of practical reasonableness, or virtue, recommended by [Finnis], as it is choices, acted intentions, by which the self is ‘moulded’, influencing future choice (p144).

The question then arises as to whether the Principle is an effective guide. That is, we are not here asking whether it is the right guide, but whether it has any ‘content’, whether it actually prohibits some acts whilst recommending others, or whether it is sufficiently vague (whilst sounding otherwise, perhaps) that any act could be reconciled with it. In this respect, one immediately notices that the statement of the Principle contains certain words, the intended senses of meaning of which have not been defined by us, in particular “benefit”, “harm”, and “innocent”. It is deliberate that definitions of these words have been omitted from the statement of the Principle.

One reason for this is that a genuine ethic cannot and must not be akin to a computer algorithm, executing precisely specified tests upon particular data and producing predetermined results. Rather, the challenge is how to give genuine help to the individual in making moral choices whilst not robbing one of one’s particular preferences, values, and understandings. The main task of this paper is to show that, in the realm of law and society, the Principle does have the power to do this. But to conclude this brief consideration of words and language, we note that incompletely defined linguistic constructs are not necessarily devoid of meaning. Even unexamined popular notions of these terms have some information con-

tent. For example, one would not expect to find many people describing an axe murderer as “doing good”, no matter which ethical principle, whether scholarly or popular, they subscribe to. Thus, “Do not attempt to harm the innocent” is a meaningful injunction despite containing vaguely defined terms.

Now certainly, further attempts can be made to better define the terms, to evaluate the vast existing relevant literature and consider which analyses of these words are or could be applicable in the context of the Principle. Consideration can be given to better understanding the overall meaning of the Principle given the relevant aspects of the meanings of its constituents; and, of course, the facts of any given case can be better or worse understood in trying to relate the injunction to specific context. Consider an adult deciding whether to give a lolly to a child. At first, the adult considers this an attempt to benefit the child by adding to the child’s happiness. But then someone points out that they are in a situation where no toothbrushes are available, and the lolly might contribute to tooth decay, causing a longer term harm. The adult decides not to give the lolly; and this might indeed be the wisest choice. But suppose the second adult had not been handy, what then? In the limited understanding of harm and benefit, flawed though it was, the choice of the adult to give the lolly is an example of goodness according to the Principle. But better education, knowledge, or understanding might well have altered that choice to the complete opposite, whilst still being an act of goodness. Far from being a defect of the Principle, this is a feature of how the Principle works in this universe of imperfect knowledge. It is a characteristic that the Principle is designed to handle; even more, this imprecision in the Principle’s recommendations is contributory to its usefulness as a foundation for ethics, for such must be capable of development and elaboration as humanity learns and evolves. Further investigation, philosophical, linguistic, scientific, and so on, is both desired and expected, without in the least anticipating that this process will end with all questions answered and everyone’s decisions predetermined.

The Basis of Law

The modern mind finds it increasingly strange that in earlier times laws were not thought to be the free choice of a people or their government. Ecclesiastical law, Sharia, common law, the divine right of kings, tribal law, these and more fit, to a greater or lesser extent, a mould that has become increasingly inaccessible to contemporary thought. The perceived need in the medieval era for kings to find legitimation of their authority in some kind of claim leading back to the Roman Empire (Russell, p495) would seem to be psychologically of the same kind, especially

as that empire receded from memory and took on a halo of myth rather than history. Whatever one thinks of the rationale, it is nevertheless the case that all observed societies do have laws, and they include a great deal of commonality, such as laws against murder and other innately understood crimes. But from the time of Locke and Hobbes, the idea arose that a pre-legal condition once existed, or that it is useful to imagine that it existed. Within such a framework, it becomes reasonable to think that laws, all laws, are the free choice of people. Such influences perhaps led to the British parliament, in 1766, passing the Declaratory Act in reference to the American colonies, asserting it had the right to pass any law. Such a declaration would have been seen as incomprehensible, or even evil, to many of their ancestors. (For relevant discussion, see [Hayek 1978] pp176-192.)

A partial return to the previous understanding is seen in the amendments to the Constitution of the United States constituting the Bill of Rights. This might be taken as just more basic law freely chosen, were it not for the ninth amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Here an explicit acknowledgment is made of pre-existing rights (for only that which already exists can be "retained"). And yet no source of these existing rights is mentioned. How might a court justify and substantiate the existence of unenun- ciated rights?

Western society, and many others besides, are clearly no longer able to use divine fiat, or a holy book, as the genesis of rights, nor is such a development desirable, given the importance of secular government to freedom. (Secularity is here interpreted as impartiality and tolerance for personal views and opinions, rather than as affirmation of any positive doctrine of religious disbelief.) What, then, should form the foundation for unenun- ciated rights? One might have hoped that the consensus of decent people, alone, would be enough. Indeed, western civilisation has gone far on that basis alone, to the point that many non-western nations such as Japan have embraced much of the western ideal. But all is not well. If an underlying common denominator of shared presumptions is all that underlies civil order, that order will be limited to no higher a standard than this common substrate can support. A particularly egregious example illustrates this point. Court after court in the United States has asserted that innocence alone is not sufficient reason for relief from penalties for committing a crime (for example, see *Cherrix v Braxton*). An advanced western society cannot even uphold an ethical principle as fundamental as that the innocent should not knowingly be punished for a crime they did not commit. This is such an affront

to genuine justice, that it is clear that an informal consensus on unspoken and unexamined common moral assumptions is not sufficient even to protect basic human rights, even when, as in this case, most persons would agree strongly with this proposition. There is no room here to offer additional cases, but doubtless each reader will know of further examples of injustice structurally embedded in society.

Is it possible, then, that a nonreligious basis might be found that could function as the underlying foundational principle of a moral society? We believe so, and we offer the Principle of Goodness as that source of rights. To judge such a claim, the reader will undoubtedly wish to investigate two issues: firstly, whether the ethical Principle gives sufficient guidance, and secondly, whether one approves of the kind of social order that might result from follow- ing such guidance. The former question amounts to asking how to relate an ethic, which in a secular so- ciety must be a personal standard, to societal stand- ards, which require common, if not universal, con- sent. The most commonly-accepted grounding ethical construct in contemporary society must surely be the concept of rights (for example, the [United Nations Declaration]). There is a straightforward relation between ethical obligations and rights: we suppose a right to be simply an obligation upon another per- son or group. Thus we do not possess a "right" not to be struck by lightning, because no moral agent controls whether such an event occurs; but we do possess a right to a fair trial because moral agents, both individually and collectively as police, judiciary, etc., become obligated under that right to deliver such a trial to us. In this sense, talk of rights as pos- sessions is seen to be another case of process approx- imated as object. There are variations in the 'strength' of both rights and obligations, but the identification above handles this nicely. In the first approximation, a legal right for one imposes legal obligations on others, whereas a right for one recog- nised in an ethical sense would be considered to im- pose an ethical obligation on others.

We may extend such an equation, however, by noting that a government, a civil society, might incur to itself legal obligations in pursuit of a merely eth- ical, or moral, right on the part of an individual. The reciprocal nature of the rights-responsibilities nexus means that this will give rise to a legal right for the individual, but the original motivation might not be a legal, but rather a moral, concern. The promotion of the concern into law as opposed to a personal choice to obey a moral code would arise from the peculiar status of society or government. An example might be the recent finding by the High Court of Australia that there is an implied right to free speech in the Australian Constitution, arising from the need of the populace to be sufficiently informed to respons-

ibly exercise their rights to a democratic vote ([Williams]). This right affects those granted by other laws (such as defamation). Thus, whilst it is recognised that one has a remedy against defamation, some speech that one might have wished to contest as defamation is in fact protected as free speech if it concerns political matters. This legal right to free speech has been manufactured out of the moral right of other citizens to be informed on political matters, for no existing law granted such a right, and certainly no one has the legal right to demand the information contained in all such protected speech (which would be expected by complementarity if the entire question were purely legal). We see, therefore, that even if something (such as the Principle of Goodness) is an ethic, not itself a law, there is no reason to suppose that, acting as the rationale for law, that is, as the basis for a constitution, it cannot give rise indirectly to law.

A Vision for Society

In view of the discussion earlier concerning the nature of this Principle, it is hardly surprising that we cannot (and would not want to) set out a description of a single, “required” utopia, whose realisation would solve all the problems of the world. On the contrary, we would expect that, from a foundational ethical principle, all manner of practical considerations, ranging from the inbuilt instincts of the human species, through characteristics of social groups, to the free preferences and choices of individuals, will play roles in determining how particular people develop a particular society; and even then there will probably be more than one possibility that might have been chosen.

With that proviso in mind, let us consider a constitution such as that of the United States, possessing a Bill of Rights enumerating certain rights, but specifying that other unenunciated rights nevertheless exist. We are not concerned here that the framers of that document might have had other considerations in mind than those we are investigating (such as reserving rights for the states). If true, that would merely strengthen the case that the obviousness of unenunciated rights in the minds of some is not sufficient to establish them in the minds of others, or to produce concrete protections through the actions of courts. And yet the impossibility of exhaustively listing all rights is obvious. So we ask, what if this constitution specifically names the Principle of Goodness as the source of unenunciated rights?

Moral and legal inferences follow from this assumption. A statement of purpose for the government can be plausibly constructed. For example (applying the Principle first of all to itself), that it exists to promote the welfare of all and to guard innocents

from harm. Such a statement would be understood in light of other reasonable principles of jurisprudence, such as that the law does not concern itself with trifles. This principle follows from the practical consideration that human beings are fallible and cannot act with perfection, and thus can be innocent even whilst doing harm. This leads to an understanding that there is a ‘lower limit’ below which the law does not interfere, but rather leaves matters up to the moral judgments of individuals. (This is a matter which speaks also to the excessive law- and rule-making of our own time.) It would also take into account that the tasks a government might set itself in light of this purpose will necessarily fail at times due to the conditions of existence in this universe. Thus it would be anticipated that individuals, courts, and other institutions might (and sooner or later, certainly will) be faced with a dilemma that obeying a law or policy directly harms innocents. Therefore policies explaining when it is acceptable to break a law or policy have to be developed at the outset. This contrasts with the existing situation, where some ‘extenuating circumstances’ are considered at law, but the individual doesn’t know what these might be until tried out in court. And, of course, even these policies might sometimes need to be broken, so complete success in formulating these matters might never be achieved.

The above does, of course, answer the example given earlier about innocents known to be wrongly convicted. The innocents’ supreme right not to be the deliberate target of harm by the government is a constitutional right that trumps any concrete law or procedure under which they are being harmed; it invalidates any such law or procedure in that specific circumstance, although not in the general case where the rule is functioning according to its conceived purpose. But we cannot leave the matter here, as the case under discussion is too close to the statement of the Principle itself to be convincing. We wish to see how things work in more distant cases where the connection is not so obvious.

Let us, then, return to the Principle itself and develop some core precepts that would guide law- and system-making. We first acknowledge that the government must not only act according to the Principle itself, but also assist individuals to do so. Further, although the Principle only imposes upon all the obligation to try to avoid evil and pursue good, nevertheless a better system is clearly one in which, when one tries to do so, one is likely to succeed. The government, therefore, must view the Principle on a meta-ethical level, attempting to bring about benefit to all indirectly by promoting success in the ethical endeavour on the part of individuals.

Certain familiar rights follow immediately, of which we only have space here to examine a few.

Free Speech

Individuals are more likely to succeed when provided with all relevant information, and so a guarantee of free speech is needed, not just for political speech, but for all speech that could inform others' ethical choices. Further, as no one can foresee (least of all from the remote vantage point at which impartial laws are made) the uses to which information will be put, any error should be on the side of permitting harmful speech rather than risking banning useful speech. Thus, one might be confident that no one will find a useful purpose for permitting publication of atomic bomb recipes, and thus ban their publication; but one need not move far from such clear-cut cases to find kinds of speech that might be generally worthless, and yet can help someone somewhere to pursue the ethical endeavour. And, of course, it is easy to see that a rational discussion can be had to determine suitable laws for protection against defamation, without changing the basic nature of the law as permitting generally free speech.

For an argument for free speech that depends directly for its success on our statement of evil, or on a doctrine relevantly like it in focusing on, not the quantity of wrong, but on its being done to even the smallest number, we may thank no less than John Stuart Mill ([Mill] Chapter II). The extended body of his argument works for both utilitarianism and our Principle, as in: "If [an opinion silenced by censorship] is right, [the whole of mankind] are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error." But in handling an objection, he clearly alludes to an argument that *only* works for our Principle or one like it. He mentions the objection that censorship is a good thing because truth will survive persecution, whereas falsehood will not, and so persecution efficiently weeds out the true from the false. Then Mill responds, referring to the ones persecuted for teaching truth: "To discover to the world something which deeply concerns it, and of which it was previously ignorant; to prove to it that it had been mistaken on some vital point of temporal or spiritual interest, is as important a service as a human being can render to his fellow creatures... That the authors of such splendid benefits should be requited by martyrdom; that their reward should be to be dealt with as the vilest of criminals, is not, upon this theory [that persecuting is a good thing], a deplorable error and misfortune ... but the normal and justifiable state of things."

It is hard to read this and not believe that Mill intended the mere statement of the argument in these terms as a case against it; Mill's deep feelings at this point seem clearly to be that it is *wrong* to so perse-

cute pure benefactors (by definition innocents in the case). The obvious completion of the argument is to simply say so; which, according to our Principle, clinches the matter. But Mill, perhaps sensing that such a completion is not in accord with utilitarianism, provides another one, almost a grasping at straws, as it makes no sense in utilitarian terms: "People who defend this mode of treating benefactors, can not be supposed to set much value on the benefit..." On the contrary, they recommend this action because they think (on Mill's own account) that the benefit is so great as to *outweigh* the harm. He then goes on, as might be expected, to add an argument denying that truth does always win over persecution. But that makes the wrong in persecuting our benefactors merely a contingent truth, depending upon its efficacy in serving our self-interests against the interests of a minority. This seems to be a more or less general characteristic of any principle deduced from utilitarian arguments. Not so with the Principle of Goodness.

Promises and Contracts

Individuals will be better able to pursue their plans, such as to benefit all, if they have the ability to cooperate with others, sharing effort and rewards in ways that participating parties determine to provide better outcomes than if each works alone. (We need not address seemingly contrary arguments such as [Hayek 1944]'s in favour of competition and free markets, because they do not contradict ours; almost of necessity, whatever one can achieve in any system, one will likely achieve more if one is *also* allowed to cooperate as well as use any other facilities within the system.) This necessitates a system of promising, ranging from personal promises, in which the government will not interfere, to legal promises, or contracts, which it will enforce. Of necessity this must extend to allowing contracts for family-building, namely marriage agreements, and it must include enforcing agreed terms in such contracts, as these underpin the most important decisions in most people's lives. Thus we see that systems of justice will be necessary, containing both rewards and punishments, working on many levels, from mere social approval or disapproval, through economic rewards and penalties, to legal entitlements or punishments.

In order to be inclusive of all, one creating benefits for others should be benefited themselves, and so reinforcements for positive behaviour must be created. In the field of intellectual endeavour, such a service was once performed by patent and copyright law, although we believe that now, this law is so maladapted to the requirements of the time, and so perverted by bad law made in response to lobbying by big business, that the system has now ceased to function in this capacity; discussion of this is outside

the scope of this paper. But clearly a reward system for contributions by intellectual and other creative endeavour must exist; further (recalling the need to try to benefit everyone), it must reward without requiring exceptional effort to register one's right; this is necessary so that the poor and those living in less advanced societies will not be disadvantaged in obtaining reward for their contributions. (Returning to the real world for a moment, we regard the design of better systems of intellectual property reward (perhaps by re-conceiving the need as something other than property) to be urgent to protect the rights of the world's poorest.)

Shared Social Understandings

To summarise so far, we have a society with a strong sense of the connection between rights and responsibilities, whether on the part of individuals or governments or social organisations. This, together with the Principle itself, which centres ethics upon the individual's choices, implies a keen respect for individual conscience in its valuation and conception of usage of rights for both personal goals and in fulfilling responsibilities.

To proceed further, we must first note that the Principle also encourages a kind of fraternity. To explain this, we note that this ethic is not exclusively altruistic, although it might call for altruism in some cases. Although it asks that we try to benefit all who are affected by our actions, we ourselves will usually be in that group; we are not asked to sacrifice our own interests for others, but rather to incorporate the interests of others into plans which will also benefit ourselves. (In this sense there is profound disagreement with one side-issue in the ethics of [Kant] (Section I, 7), who insists that ethical action must be done from a sense of duty alone.) The kind of fraternity referred to is therefore something like "We are all in this together." This is a unity of concern (that we all wish to flourish), but is not a unity of thoughts, specific goals, or other such things, and is summed up in the well-known phrase "unity in diversity", indicating friendship and well-wishing across cultures and other differences.

Comparing these thoughts with the principles of the French revolution, we see we can justify both liberty and fraternity; but turning to equality, no justification under the Principle seems to be forthcoming. Indeed, there will be cases where a reasonable person will not choose equality. Suppose two businesses can develop a product together, but they have to choose between two different product designs. One will net a million pounds profit to each business, whilst the other will net ten million pounds to one business and twenty million to the other (all else being equal). Which choice is the rational one?

Clearly, nothing except envy would prevent these businesses choosing the more profitable option, even though it results in unequal returns.

Our point is that a unity of concern, an inclusive altruism that encompasses others as well as ourselves, does not imply equality of outcome, nor that we should always have policies of equalisation. Thus it does not imply collectivism or the absence of private property. Indeed, these would seem to be at odds with the goal we have already discovered for the government, to enhance the ability of individuals to succeed in the ethical endeavour. One reason is that these arrangements disconnect the ethical impulse on the part of an individual from any significant benefit to the individual himself; a lot of effort for a large group, averaged, amounts to an insignificant change to each one. Whilst individuals are capable of altruistic acts, ongoing lifelong self-denying altruism is demonstrably beyond the capacity of almost every human being. And yet, when social systems are planned, so attractive is the call of altruism, of slogans such as "cooperation, not competition", that this fact has been repeatedly overlooked, and the resulting malfunctioning systems have wreaked terrible misery for hundreds of millions throughout the twentieth century (for example see [Horowitz p108-111]). Whilst the attraction to altruism is commendable, it is clearly an impulse best reserved for individual use as and when an individual feels capable of it. To apply it to others, that is, to design societies that, by their structure, expect *other people*, namely the subjects in this designed society (by no means all of whom will have been amongst the designers), to be continually altruistic, enmeshes innocents in a society that is radically hostile to human nature and is therefore doomed to fail.

Thus society must be such that persons may pursue plans of their own design, benefiting themselves and others, but they will almost certainly consider themselves and those close to themselves first, and others less so; this is a self-evident fact about human psychology (but see extended discussion in [Wright]). Also, different persons will obtain different outcomes, even in identical situations. This might sound just like capitalism, but we must remember that it will be a 'capitalism' underpinned by adherence to a strong and specific ethical ideal: don't harm the innocent, and try to benefit everyone concerned in all your acts. It is often forgotten that [Adam Smith] also wrote a book on morals. In this sense, modern 'ethics-free' capitalism is a serious perversion of Smith's original conception. Smith seems to have intuitively understood that the goal of unity of concern, that is, fraternity, will only work with mechanisms that connect outcomes for ourselves with outcomes for others; by working for the common good according to our own plans, we might and probably

will earn a reward that exceeds the benefit of our work to any particular other, and yet our work should take place in a genuine *society*, not merely in a disconnected collection of human beings. Thus, paradoxically, equality and fraternity are incompatible, and the Principle of Goodness tells us to choose fraternity.

This by no means implies, however, that such a system would be *unbridled*. One can certainly approve of private property without consenting to give anyone the right to amass absolutely any amount of it. Just as the need to earn reward for one's efforts is part of our nature, so also is there a limit to this impulse. No human being can meaningfully conceive the difference between owning one billion or two billion pounds, in today's money; beyond a certain point the instinct malfunctions, and the tycoon focuses, not on what actual benefit has been obtained from the day's effort, but merely on the meaningless fact that another hundred million was added to the number on the bank statement.

Inherent in the development of actual rules and laws from the Principle of Goodness is the combination of advice from the Principle with empirical knowledge. The only reason for accepting a market system is that it works: [Hayek 1944], decades before the decisive historical collapse of communism, explained why central planning can never work: in brief, because the prices on a free market provide each buyer with information about the relative expenses (which translates into difficulty of production, material usage, and so on) of alternative products and services. This is information that is beyond the capacity of any human mind to obtain by actually following all the details of how every good is provided. Thus, each moral agent may take account of thousands or millions of circumstances in making a purchasing choice, circumstances which could never be accounted for, either by an individual or a central planner, if they had to follow all the concrete facts known to all the many actors involved in the process of production.

We need not, however accept any system uncritically or in finality, as this is an empirical, not an ideological, exercise; justification for a free market in terms of providing information for a moral actor does not necessarily involve 'buying' every argument from free-market ideologists; it provides no justification for using it deceitfully, and it most certainly doesn't justify disturbing the mechanism of the market itself to give false value indicators to moral actors, for example, price fixing, dumping, loss-leaders, and so on, or using bad laws in some countries to make cheap product at cost to powerless groups, animals, or the environment. A society imbued with the Principle of Goodness will be vigilant in guarding against such malpractices, and will also

act to ensure proper pricing by bringing costs home to the user. Examples are environmental destruction and global warming. Destruction of the vegetation on a plot of land, for example, might be conducted for 'free' if a company bought the land cheaply, but our posited society would charge the true cost anyway, even if the locally involved parties all agreed to permit it. And having a free market doesn't prevent having laws that prohibit some actions, no matter what the cost. (For an extended discussion touching on the wider implications of Smith's work beyond those recognised in 'economic rationalism', including the importance of social 'fabric', see [Ormerod].)

Example: Embryonic Stem Cells

So far we have talked in generalities, but room must be found for one example, to show that concrete advice is provided by the theory, not mere ethical platitudes. Our example concerns modern technologies permitting creation of human embryos, which might be used to assist a family in having children, in medical research, or in creating 'spare parts' and stem cell lines for curing disease. Opinions on this subject are often diametrically opposed and held vehemently. Opponents of all such acts and those approving of them have each called the other 'murderers', one group thinking of the destroyed embryos and the other of the lives that might be lost if they are not destroyed. In a utilitarian calculus, by definition, one thinks of the relative quantities of good and bad outcome, and judges accordingly; typically utilitarians have supported such techniques and have also by-and-large won the public debate on utility grounds. Their opponents, often for religious reasons, have found it hard to mount convincing counter-arguments.

The following is how we see the Principle to apply in this situation. Some other interpretations are possible, but some are not. The Principle does not allow us to deliberately harm the innocent, but it does allow us to fail in avoiding such harm. When an innocent is harmed, then, we must ask whether it was harmed due to deliberate design or to failure to find a way to protect. (Note that this most definitely is *not* simply asking whether the harm came from action or inaction.) In general, choosing to use some innocents to benefit others must be regarded as deliberate harm. Creating embryos with the intention of destroying them in scientific research or in developing cures for others is deliberate harm, and is therefore not ethically justifiable, full stop. The objection that much greater harm will come to existing persons from such a refusal to act is simply irrelevant; creating an embryo in order to harm it is not available for consideration; we most certainly need not intend

harm to the existing persons in making this choice, and we are completely free to exert every effort in finding other ways to help them; but *this* way is not available.

It might be objected that these embryos are not yet sentient and do not qualify for consideration. Such a point is relevant when one is faced with a conundrum, a failure to find a way through, as when considering early abortions, where the mother and the embryo might have conflicting interests; to object that the embryo has no interests is relevant then. But to set up a system of deliberate harm, bringing embryos into existence *in order to harm them*, relying on a disputed and uncertain theory about embryos to assert that no being is thus harmed, this crosses a line that is quite clear under the Principle, but not under any consequentialist ethical theory.

So far, we believe, there is no doubt as to what the Principle of Goodness prescribes, but the remaining case is susceptible of differing opinions. Creating embryos artificially as a reproductive aid does not succumb to the above analysis. It might be necessary, due to limitations in the technique, to create embryos that are not used (perhaps in order to find one that is viable and without defect), and the rest will be destroyed, but that destruction will not be deliberate harm, it will be failure to find a way to protect. One might judge that one has created it to give it a chance at life, but has found that its life would be more harmful than its death at an early stage. In this argument, we concede that others might analyse the situation differently and reject even this reason for using such techniques.

Considering that governments, such as the Australian, are under increasing pressure to permit cloning and embryonic stem cell research, a rejection of the entire enterprise for reasons of fundamental

ethical principle is no small matter. If any thought had been entertained that the Principle of Goodness is merely a feel-good ethics with no real consequences, it should be dismissed by this example.

Conclusion

We have discussed some aspects of the form of law and society assuming a basis in the new ethical theory, the Principle of Goodness, which, being a general principle, must be combined with knowledge of human nature and facts about existing conditions in order to generate a specific recommendation on an issue. We have had to place limits on the investigation owing to the immensity of the subject, but we have provided one (controversial) example to show that this ethic is not a mere form of words that can support any opinion (although it can support a range of opinions on most issues). In general, the kind of society that is in accord with the Principle prizes cooperation and a strong sense of what may be called fraternity, whilst valuing individual conscience and personal values. It will believe in the need for both rights and responsibilities, in the sense we have discussed them here.

There is one final point to make before closing. In actually changing a real society, one must do so incrementally, in evolutionary steps, not revolutionary ones. Nothing, the Principle surely tells us, is more contemptible than the “heroic experiments” in societal structure during the twentieth century. To regard real sentient beings, with all their capacity for flourishing or for suffering, as cheap material for social experiment is the very antithesis of Goodness.

The authors plan to pursue further investigation of law and policy in the light of the Principle of Goodness.

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